UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CONF.157/LACRM/3
15 December 1992

ENGLISH
Original: FRENCH

WORLD CONFERENCE ON HUMAN RIGHTS
Regional Meeting for Latin America
and the Caribbean
San José, Costa Rica, 18-22 January 1993
Item 7 of the provisional agenda

EVALUATION OF THE RESULTS ACHIEVED IN THE PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, WITH EMPHASIS ON THE IMPLEMENTATION OF THE RELEVANT HUMAN RIGHTS STANDARDS AND INSTRUMENTS AND ON THE EFFECTIVENESS OF INTERNATIONAL AND REGIONAL METHODS AND PROCEDURES

The reform of international institutions for the protection of human rights, report prepared by Jean Marie Becet and Karel Vasak for the First International Colloquium on Human Rights, La Laguna (Tenerife), 1-4 November 1992

The First International Colloquium on Human Rights in La Laguna, the main theme of which was the reform of international institutions for the protection of human rights, was held in La Laguna (Tenerife) from 1 to 4 November 1992. The Colloquium was organized, in cooperation with the Spanish National Commission for UNESCO, by the University of La Laguna on the occasion of the celebration of the bicentenary of its foundation, under the auspices of UNESCO and in the presence of its Director-General, Mr. Federico Mayor Zaragoza. In view of the relevance of the report prepared by Mr. Becet and Mr. Vasak, the secretariat considered that it could usefully be presented under the agenda item relating to the effectiveness of international methods and procedures.

THE REFORM OF INTERNATIONAL INSTITUTIONS FOR THE PROTECTION OF HUMAN RIGHTS

Jean Marie Becet and Karel Vasak

1. As a result of the human rights "explosion" in the 1970s, a concept formulated overall, essentially, by Westerners, it is true, but as part of a universal approach, became an everyday demand on the part of "all peoples and all nations". These words, taken from the preamble of the Universal Declaration of Human Rights to describe the present situation, perfectly describe the success of the venture embarked upon systematically at the international level following the Second World War. However, as in all human activity, the "yin" is accompanied by the "yang", and success is accompanied by unwanted effects which, in this case, have turned the sacred struggle for the permanent and pre-eminent values of human beings into a commonplace affair.

2. To be candid, we are threatened by failure, which would be no more than the normal consequence of our success. If we are to avoid it, we must prevent human rights from being watered down in a somewhat moralizing climate, on the cheap, just as, at the same time, we must learn how to translate into human rights terms the human dimensions of life in an ever more complex society.

3. The watering down or weakening of human rights was manifested first and foremost in their encounter with humanitarian law. The supporters of the latter have never looked very favourably upon efforts to bring the two types of law closer together, since they have always feared that humanitarian law, inspired by charity (Inter armas caritas is the motto of ICRC), might be contaminated by politics, which is always an element of the law of human rights. These criticisms, pursued vigorously during the 1960s, abated in 1977 with the adoption of the two additional protocols to the four Geneva Conventions of 1949, in so far as these new instruments embody the resolve of their authors to assist and aid the victims of armed conflicts (the traditional concern of the supporters of humanitarian law) just as much as the concern to protect them, by ensuring the observance of a number of the victims' acknowledged rights (the prime concern of human rights advocates). Humanitarian law could not but benefit from this rapprochement, albeit at some cost to the requirement of political neutrality which the humanitarian organizations, and first of all those of the Red Cross, regarded as fundamental.

4. As far as human rights are concerned, the fact that they have shifted closer to the spirit of humanitarian law is probably primarily the consequence of the negotiations that led to the signature of the Helsinki Final Act on 1 August 1975, which gave rise to the CSCE (Conference on Security and Cooperation in Europe) process. Trading recognition of the European frontiers resulting from the Second World War for respect for human rights in the Communist world, the West agreed with the Soviet Union that human rights problems should be addressed from the viewpoint of helping and assisting the persons concerned, and not with the intention of condemning the States responsible for violating their rights.

This viewpoint, hitherto restricted largely to the Red Cross, appears nowhere more clearly than in the title of the third basket in the negotiations - "Cooperation in humanitarian and other fields" - whereas the issues involved were primarily human rights issues.

5. We know the next stage and the (provisional?) end of the process with the "autumn of the peoples" in 1989. Yet there has not been a return to the separation, psychological as much as political and structural, between the law of human rights and humanitarian law. Since the two have not been clearly delimited, it is now easy to pass from one to the other, in the light of specific situations and at the whim of the politicians who take concrete decisions. Confusion now reigns, as can be seen in France, for example, by the changing title of the office of the Secretary of State dealing with these problems, which, one day, is responsible for humanitarian activities, then the next day is entrusted with human rights, returning thereafter - no doubt temporarily - to humanitarian activities, without any change in the powers and methods of action of the office.

6. Whereas in the 1960s it was the distinction between "promotion" and "protection" of human rights which progressively took hold - and this undoubtedly promoted the cause of human rights - today it is the distinction between "protection" and "assistance" which should be more clearly established, and the practical consequences, in terms of methods of action, drawn. The present confusion, which is probably prejudicial to advances in the observance of human rights, must at all events be present in our minds throughout the arguments that will follow.

I. WHAT HUMAN RIGHTS ARE TO BE PROTECTED?

1. The debate over the "new" human rights

7. During the 1970s it was good form to take a position, even by means of a communication to the French Academy of Moral and Political Sciences, on the problem of "new" human rights, and more specifically against the theory of the "three generations" of human rights. Generally speaking, this theory did not catch on in Europe, where most specialists saw in it primarily a risk that collective aspects would dominate individual aspects of the only genuine human rights - first and foremost civil and political rights.

8. Here too confusion was introduced into the discussion, as a result of the transformation of solidarity-related rights (conceived as additional human rights) by the authors of the Banjul African Charter on Human and Peoples' Rights.

9. Since then, the argument has abated, since the ranks of the adversaries of this theory have become notably thinner. This is due quite simply to the imperturbable work of United Nations bodies to define international standards in this regard: following the right to development, proclaimed as a human right by the General Assembly in resolution 41/128 of 4 December 1986, the time has certainly come for definite recognition of the right to an ecologically balanced environment, which began to take shape starting with the Stockholm Conference in 1972, and which the Earth Summit in Rio de Janeiro in 1992 certainly did no more than round off. There remain the right to peace,

which even the French President is beginning to speak of without being regarded as a belated pupil of Leonid Brezhnev (who went so far as to arrange for his henchmen to write a book on "the right to peace ..."), and the right to respect for the common heritage of mankind, which the environmental groundswell cannot fail to bring before legal experts in order that they should spell it out precisely.

10. But above all, a new solidarity-related right has been added, the right to humanitarian assistance, which began to take shape in 1986 and is certainly now recognized by the entire international community. The right to humanitarian assistance, which the organizations of the Red Cross prefer to the highly contentious "right" or even "duty to intervene", is the right of everyone to be assisted when his or her life and health are seriously threatened, to seek such assistance and benefit from it, without any discrimination, a right which - like the other solidarity-related rights - can be both invoked against States, individuals and public and private bodies and required of them.

11. As we can see, the "three generations" theory undoubtedly has a bright future before it. However, the defensive attitude towards it displayed by the proponents of a list of human rights that they claim was closed by the International Bill of Human Rights (the Universal Declaration and the two Covenants) has had a particularly dangerous unwanted effect: once solidarity-related rights were rejected for the principal reason that they may not be the subject of recourse to the courts, there was no reason to stop halfway: the argument also applies to almost all economic, social and cultural rights. This step was immediately taken both by Mrs. Thatcher and her followers and, above all, by Ronald Reagan and his "boys"; the report published each year by the United States Department of State on the world human rights situation grants the status of human rights only to civil and political rights, while economic and social rights are transformed into mere "principles". In the years to come the continuing discussion will, as we know, be concentrated in the European Community.

2. Towards autonomous cultural rights

12. If we examine the major international human rights instruments to determine what place cultural rights occupy in them, we will discover two rather surprising facts:

(i) Cultural rights are associated either with civil and political rights (and are therefore regarded as "intrinsic"), or with economic and social rights (and hence regarded as "claimable rights"), or even "spread" between the two categories of human rights within a single organization;

(ii) Cultural rights are always drafted legally in terms of individual rights, whereas culture is in its essence a collective good and must, to be "genuine", have a degree of communal content - it must be made available to the community.

13. The above-mentioned uncertainty as to the proper place of cultural rights therefore forces us to conclude that cultural rights are sui generis, being

both "intrinsic" and "claimable", both individual rights and collective rights. This conclusion should lead us to contemplate a specific system for the application of cultural rights at the international level.

14. This conclusion is all the more obvious as the international protection of national minorities - a vital issue since the collapse of the communist regimes in central and eastern Europe - arises essentially, but not exclusively, in terms of the protection of cultural rights, and in the first place linguistic rights.

3. The ambiguity of economic rights

15. Whereas the first United Nations human rights covenant, according to its title, includes economic rights beside social and cultural rights, it is surprising to note that the right to property, the only right whose economic nature is universally acknowledged (even if, following the French Revolution, it is sometimes also granted the status of a political right), is absent. Ultimately, one might legitimately ask whether the Covenant, which is also supposed tc cover economic rights, is not in fact entirely devoid of them! When this observation was made to Soviet officials, they immediately pointed to the right to work, which could not fail to shock Western trade unionists, for whom labour can never become a marketable good; for them, the right to work is first and foremost a social human right.

16. The argument about economic rights, which from this viewpoint had become obsolete, has probably been revived because the whole world now seems to subscribe to the market economy, which is acknowledged to generate efficiency, and hence wealth.

Some people go so far as to identify political liberalism with economic liberalism, as if, in the name of freedom, the former could not fail to lead to the latter, and vice versa. Will this not give rise to the emergence of new economic rights in addition to the right to property, which no one now refuses to acknowledge as a human right?

Would it not be a good idea to revive the ancient freedom of industry and commerce, updating it to suit a global economy and a worldwide market, and proclaiming the freedom to enter into contracts as a human right? It will be difficult not to take up these issues in the coming years.

II. WHO IS TO BE PROTECTED AGAINST WHOM?

17. At a time when the universality of human rights is no longer questioned, it may seem obvious that the old liberal response of protecting man as an individual solely against the State (at the risk of promoting revolt and lack of public spirit) is outmoded and should be replaced by another, including man-in-society, on the one hand, and non-State bodies, on the other.

18. Yet the rights of individuals dating from 1789 retain their full force and can still serve as the source of important progress, even in the Western democracies. As M. Rivero writes ("Les libertés publiques", volume I, "Les droits de l'homme", Thémis, 4th ed. 1991, p. 132), these rights display "extraordinary youthfulness" and for many people constitute a goal to be aimed

at. Clear proof may be seen in the fact that the recent events which transformed the countries of eastern Europe and caused the destruction of a concept of human rights based exclusively on their socialization were triggered - at least in appearance - in the name of these civil and political rights. Human rights are always about individuals: it remains essential to spell this out clearly in international instruments. However, this point having been made, we must examine the other responses to the question "Who is to be protected?", and decide whether it is possible to suggest a new approach taking evolving concepts into account.

19. Some of the most important international instruments refer to "the rights of peoples" (the right of peoples to determine their own destiny, the right to existence, the right to dispose freely of one's wealth, and the right to development). Against the background of the current events in former Yugoslavia, the former Soviet Union or elsewhere, the discussion on these "rights of peoples" is more topical than ever. It is not for us to take a hasty position on whether such rights actually have a place in the major international human rights instruments; nevertheless, we will make the following observations: these are collective political demands for which it is very difficult to find legal sanction; these rights of peoples often serve as Trojan horses to be used against human rights, which are presented as secondary rights (the developmentalist approach). Perhaps it is preferable not to mix matters.

20. The African Charter on Human and Peoples' Rights offers an approach which differs a little from the above, by elaborating upon the rights of groups and micro-societies, community rights belonging to the group as a whole, vis-à-vis which the individual has duties first and foremost. Here it is not the imperatives of economic development that are highlighted, but the rediscovery and affirmation of specific and authentic traditions. Here too, it will be observed that while certain human rights (cultural rights and political rights) may be reinforced by a return to tradition, tradition frequently constitutes a major obstacle to the realization of the rights of the individual (lack of opposition to the "chief", the status of women, and so on). The situation in the Arab countries in this regard is little different. In short, it can be said that wherever the community is given priority (as in the above examples, but also under the Marxist approach), we find authoritarian regimes and the individual held in low esteem.

21. Does this mean that we must follow some writers (M. VILLEY: "Le droit et les droits de l'homme", PUF, "Questions" 1983) in advocating a return to the present state of affairs and abandon claimable rights and all that has been added to the liberal concept of human rights? This would, we believe, be a wholly retrograde step. We must, on the contrary, achieve a new approach which we may seek to base on the concept of the human person, a concept which takes account of the two complementary aspects of this person: the individual and the social.

22. On 13 September 1989, at its session in Santiago de Compostella, the Institute of International Law adopted a resolution on "the protection of

human rights and the principle of non-intervention in internal affairs of States". Article 1 of the resolution is very telling:

> "Human rights are a direct expression of the dignity of the human person. The obligation of States to ensure their observance derives from the recognition of this dignity as proclaimed in the Charter of the United Nations and in the Universal Declaration of Human Rights."

23. The human person referred to here is not the isolated individual facing the State or submerged in the group; nor is it the fortunate person who, supported by "pressure groups", seeks continued privileges regardless of the general interest or the liberty of all. It is man acting within society, thanks to that society, but in the interest of all the members of that society. The dignity of this person obliges the State to guarantee to him all the traditional rights of the individual, but also obliges it to intervene to correct the most blatant social injustices. In return, the human person, whose rights are guaranteed by society, cannot exercise them directly against that society. The concept of functional rights corresponds perfectly to this situation: those possessing these functional rights use them for their own benefit, naturally, but also in the general interest. If the right to property exactly matches this definition, most "extrinsic" rights (freedom of expression, freedom of information, the right to work and other economic and social rights) can easily be linked to it.

24. This new approach would signal a shift from the rights of man to the rights of men. By eliminating the contrast between traditional rights and economic and social rights, it would also make it possible to escape the dilemma of "more traditional rights = less economic rights", or "more economic rights = less traditional rights" (Y. MADIOT, "Droits de l'Homme", Masson, sème éd. 1991, p. 77). Eventually, when they have been separated, one might contemplate combining all the rights of the individual in a single instrument corresponding to the restored unity of the concept of human rights.

25. The counterpart of the human person, the active subject of human rights, is always the State, from which all these rights are claimed.

26. In this context, the theory of the reform of the State is still a topical one, throughout this unstable and dangerous changing world. There are very few States today which genuinely respect the fundamental rights of the human person. Every day news bulletins report violations of these rights in Africa, Latin America, or even certain European States. Even in the 30 of so genuine pluralist democracies, "living in freedom" is not an unchangeable state of affairs, established once and for all, but an achievement which must be defended: if citizens remain passive vis-à-vis the State which "assists" them in all difficulties, the authorities can engage in a sort of "welfare blackmail" which inevitably leads to a new type of enslavement.

27. Not the least of the reasons for this is that the modern State seems to have been strengthened considerably both by changing forms of "power" and by developments in techniques. Power everywhere is being appropriated by the executive, or personalized. Parliaments are being eclipsed; where they do appear, majority systems often turn them into simple tools of the executive. The executive, moreover, can deploy investigative and propaganda resources

that multiply its opportunities for oppression tenfold, but the oppression, being painless, is not always immediately recognizable to the individual. It would certainly be worthwhile for international human rights instruments to take up this problem.

28. Conversely, international human rights instruments should also make allowance for the challenge to the State's function as the exclusive source of binding rules. States have had to agree to share this function with sub-State-level public bodies under the more or less ambitious decentralization policies which the public's desire to participate and the need for efficiency are making necessary almost everywhere. The old problem, never satisfactorily solved in federal States, then arises virtually everywhere: does it make sense to be able to challenge only the central State, which may have nothing to do with an alleged human rights violation? Would it not be possible to challenge a particular region, Land or similar before the European Court of Human Rights, for example? Again, are not supranational entities and international organizations themselves sometimes constrained to violate human rights? One example: there are today some 80,000 United Nations peacekeepers serving around the world. Can one be certain that their activities will cause no violation of human rights? If not, what system of redress is available?

29. The underlying problem, however, is basically unchanged: the chief safeguard of human rights lies in the way "power" is organized. The authors of the 1789 Declaration of the Rights of Man and the Citizen got it right when they identified safeguards of human rights with the separation of powers. The chief shortcoming in international human rights instruments is - perhaps - that apart from the reference in the European Convention on Human Rights to a "democratic society", there are no rules governing the internal arrangements for the exercise of power. This was entirely justified under traditional international law: the dogma of State sovereignty was hard and fast. Where human rights are concerned, however, it may now be time to spell out the essential feature of a regime that respects individual liberties: parliamentary, transparent and decentralized democracy.

30. There is an intrinsic link between human rights and parliamentary democracy; this is particularly clear today in the light of recent events in central and eastern Europe. Parliamentary democracy cannot exist without recognition of and respect for human rights, given that human rights can only be fully respected and exercised under a democratic parliamentary system. The same applies to Africa and America, where the campaign for human rights is intermingled with the fight for democratic rule based on freely elected parliaments. As for developing countries, the argument between those who used to maintain that democracy would result from development and those who said democracy was a precondition for it has become a side issue, in which the latter are clearly winning. As M. M'Bow said, an efficient campaign against underdevelopment and poverty presupposes the thorough democratization of society and the expansion of political life to encompass everyone concerned (Droits de l'homme et relations internationales, (Masson, 1989), p. 106). Democracy must accompany development; the argument that it can only come afterwards merely seeks to justify the complete lack of supervision over the policies of dictatorial leaders. But although pluralist democracy is a necessary condition, it is not always a sufficient one. Our existing

democratic societies are in crisis: there is a loss of civic pride and individuals are turning back to basically material values. Besides the habitual ingredients of democracy, besides the rule of law in its purely technical sense (the principles of empowerment by statute and a hierarchy of rules: see J. Chevalier, L'Etat de droit, (R.D.P., 1988), pp. 313 ff.), it would be helpful, as a means of reviving democracy, to proclaim two new, supplementary principles in human rights instruments: transparency, and joint effort or participation, which would enable the rule of law to win general acceptance.

31. Transparency serves two purposes. It helps to inject some morality into political life (financial transparency of parties, control of election spending, etc.), thus reviving confidence in institutions ill-served by men whose integrity has been open to challenge. More important, it enables citizens to find out what those in power have done (communication of documents, explanation of actions). The public's right to know should be as broad as possible and should cover all the documents used in reaching a decision. It should be backed up by the right to be told the reasons for decisions, in particular unfavourable ones: under a democracy, individuals should understand the reasons for decisions imposed on them by the authorities (see B. Lasserre, N. Lenoir, B. Stirn, "La transparence administrative", Coll. Politique d'aujourd'hui, (PUF, 1987)).

32. Proper information leads logically to dialogue, which can gradually replace a purely adversarial approach in the event of disputes, or to the involvement of the general public in some of the decisions affecting them. Direct consultation at any level (national or local), whatever the legal standing of the outcome (the competent authority need not necessarily be bound by it - see articles L 125-1 to L 125-7 of the French Code des communes), encourages the organized expression of public opinion other than at election time and seems to give a boost to democracy, provided of course that the authorities are not always being challenged - i.e., that consultation is kept within limits. Joint efforts may be used in a wider range of circumstances; by leading to compromise, they also help to secure the adoption, instead of imposition, of "acceptable" decisions.

33. Lastly, it also seems clear that decentralization, which involves the general public in the machinery of political choices, if only through the election of local authorities, is the administrative arrangement best suited to the development of the democratic spirit.

34. Thirdly, it must be understood that while human rights need to be protected against the State and new techniques need to be written into major international agreements for this purpose, this does not mean the State needs to be weakened. The worst case is when the State collapses, as the current example of the former Yugoslavia, or the slightly older one of El Salvador, clearly show.

35. The State as the embodiment of power is necessary on two counts. It is needed as the custodian of public order, without which freedom cannot flourish. And it is needed as the only entity capable of launching corrective policies to uphold the dignity of the individual against the potential excesses of economic liberalism. Besides this, the State is the only

authority capable of resisting the pernicious activities, detrimental to human rights, of today's increasingly important private centres of power. It can impose rules and check whether they are obeyed.

36. Because the State must be strong to be able to enforce the rights of the individual, it is entitled - duty-bound - to defend itself, and international instruments must include safety clauses whereby under certain conditions States can escape their obligations. All the rights of the individual can be treated the same way, whatever their nature (civil or political, economic, social or cultural), apart from those forming the hard, irreducible core. The triggering and exercise of this option should, again as under the European Convention on Human Rights, be monitored by an international body: the intention is not to turn "reasons of State" into a legal principle. Lastly, anyone who believes his rights have been infringed must have access to suitable international remedies. Here it would be desirable to do away with the clauses requiring prior acceptance by States, and to relax somewhat the rule that domestic remedies must have been exhausted.

III. MEANS OF PROTECTION

37. After almost 50 years of efforts to secure international protection for human rights, people cannot help but have some illusions and can thus become discouraged and disappointed. Hence our reform proposals here at the University of La Laguna must always be realistic: like good pragmatists, we must "know to end as to begin" and make use of all that has already been accomplished internationally before suggesting new institutions and procedures. The first concern in treating a patient is not to make his case worse or harm him (primum non nocere); in other words reform for reform's sake, leaving the situation less satisfactory than it was, is to be avoided.

38. Among the illusions people always cherish, the commonest is that international protection of human rights can replace national protection, and has now become more important. In everyday life the opposite is true: the leading international institutions for the protection of human rights are and will doubtless remain national courts. It falls chiefly to national courts to remedy violations of human rights by identifying victims, awarding compensation where appropriate, and convicting the culprits where necessary. International protection will never be more than a fall-back, sometimes more effective than domestic remedies because it is completely independent (provided it actually is), a sort of life insurance or, better, insurance against the death that individuals might face at the hands of a repressive, dictatorial totalitarian State or a State improperly invoking reasons of State.

39. For this to be true, national courts must also be able to draw on specific, thorough, directly applicable and properly enforced law on human rights. This may at present be true in some countries, but the situation is not satisfactory everywhere. Here too, however, the principle of equality of States must prevail, particularly as regards the enforcement of international law on human rights.

40. In many countries, international treaties on human rights are a part of the domestic legal system and can thus be applied and interpreted by the

national courts, but the same is not true everywhere. Not only are States not equal as regards national enforcement of international law on human rights, but also, and more important, the possessors of human rights - individuals - are treated unequally, depending on whether or not the country applies international human rights law directly. In the circumstances, the first reform should surely be to make it obligatory for all new human rights treaties from now on to be directly applicable at the national level while urging States which have not yet incorporated other human rights treaties into their national law to do so.

41. General proposals for reform which might apply to all or most international human rights institutions may be grouped under the following headings:

- the integration of human rights institutions
- the "privatization" of such institutions
- the "parliamentarization" of human rights
- the "criminalization" of human rights.

1. "Integrating" international human rights institutions

42. Conflicts of jurisdiction between different international human rights institutions have been a problem since the 1960s. A number of solutions have been put forward and adopted, for example by the Council of Europe. A priori, the basic rule for resolving conflicts appears in almost all international human rights treaties in the following form: "The same matter (must not be) being examined under another procedure of international investigation or settlement" (art. 5, para. 2 (a) of the Optional Protocol to the International Covenant on Civil and Political Rights).

43. This would not mean an "integrated" approach to human rights at the international level, however organized. There is, in fact, no real international "system" for protecting human rights since the organizations concerned mostly function as discrete, scattered entities. Yet efficiency argues in favour of a human rights "keyboard", every key representing a different procedure or remedy, which one would only have to know how to "play" in order to restore respect for human rights. Would it be possible to integrate existing institutions, procedures and remedies into a single scale, for efficiency's sake? Should one wish to?

44. Legal and political considerations extending well beyond human rights proper are likely never to permit a completely integrated approach to human rights. In the circumstances, only partial, pragmatic solutions can be envisaged, such as regular meetings, as advocated by UNESCO, between the officials in charge of human rights services within the different international organizations. The task of designing a proper protective "system" in the spirit of ongoing reform could be assigned for discussion to a small group of high-level independent experts convened every year by UNESCO and, for political decisions, to the United Nations Commission on Human Rights, which, with assistance from all the organizations concerned, could

discuss the international "system" for the protection of human rights, and how it should be reformed, as a separate agenda item at each session.

2. "Privatizing" human rights institutions

45. The wave of privatizations which has swept over national economies has not yet affected international organizations. Yet their operations and efficiency would probably also improve if they were given a larger public, non-governmental internal component. Evidence for this comes from the International Labour Organisation, regarded - rightly - as one of the best international organizations, whose tripartite structure gives prominence to its private "clientele" of employers and workers. Is not part of the reason for the basically satisfactory operation of ICAO the fact that it is "shadowed" by a non-governmental organization, IATA? And the reason for the successful unification of Europe is surely largely that the traditional intergovernmental bodies, the Council and Committee of Ministers, have been supplemented by parliamentary assemblies and even, in the case of the Communities, a Parliament elected by universal suffrage.

46. In the case of international human rights institutions the public element is chiefly represented by non-governmental organizations, which are always among those entitled to lodge a complaint if their own human rights are violated. Their role as protectors of human rights, in other words, is relatively limited and could usefully be enlarged.

47. Thus the main aim of reform might be to confer a genuine right to report human rights violations upon "any person or group of persons or non-governmental organization having reliable knowledge of such violations" (para. 14 (a) (ii) of UNESCO Executive Council decision 104 EX/3.3, establishing the procedure for consideration of allegations of human rights violations). If they are not entitled to work through legal channels by reporting violations, non-governmental organizations should at the very least be entitled to approach the deliberating bodies as amici curiae, as the European and American judicial bodies dealing with human rights allow today. The amicus curiae procedure, in widespread use in the United States, could profitably be adopted elsewhere.

3. The "parliamentarization" of human rights

48. While, historically, human rights sprang from parliamentary assemblies, treaties on human rights assign virtually no place to national and international parliaments. For example, the Parliamentary Assembly of the Council of Europe becomes involved in the operation of the European Convention on Human Rights only when members are elected to the Commission or judges to the Court, even though it is responsible for most of the "reforms" in that Convention. Similarly, it is natural for a parliamentary body to take the initiative in human rights matters, as in the case of the European Parliament which spends a great deal of time at every session considering the human rights situation in Community States and, more especially perhaps, in other European and non-European States.

49. The Greek colonels' coup d'état in 1967 sparked a widespread hostile reaction in most national and international parliaments, and since that time

it has been possible to speak of a parliamentary dimension to human rights at the international level. That spontaneous reaction, however, which was echoed at the time of the Chilean coup d'état in 1973, has never been examined with a view to systematizing and thereby strengthening it.

50. In broad outline, a "reform" in this area should probably involve the establishment within each national and international parliament of a special-purpose committee on human rights matters with responsibility not only for drawing up national and international legislation on the subject (in collaboration with, among others, the competent non-governmental organizations), but also for reacting appropriately to any situation that is or is apt to become injurious to human rights in foreign countries. It would be absurd to require such genuinely popular bodies as parliaments to abide by the shabby principle of non-interference in internal affairs, for when the knell is sounded for the freedom of one human being the freedom of all mankind is in peril.

4. The "criminalization" of human rights

51. Only after the deterioration of the human rights situation in former Yugoslavia did the international community really become aware of the need to impose criminal penalties, at least for the most serious violations of human rights. The recent establishment, under a resolution unanimously adopted by the Security Council, of a commission of inquiry into crimes against humanity and violations of international humanitarian law in Bosnia and Herzegovina is unquestionably a great step forward. This advance, imposed upon the world's conscience by circumstances, now needs to be turned into an opportunity to lay down a number of general rules originally outlined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide:

(i) The definition of a number of major international crimes against human rights, along the lines of crimes against humanity and the crime of genocide;

(ii) General acceptance of the principle of universal jurisdiction for the prosecution and punishment of those guilty of major crimes against human rights;

(iii) The establishment of an international criminal court, as originally announced in 1948, which might initially have jurisdiction only as a court of appeal or where no national court had taken up the case of a crime against human rights.